

**DURHAM, NORTH CAROLINA
JANUARY 2, 2007
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden, Council Member Brown, Council Member Catotti, Council Member Clement, Council Member Stith, and Council Member Woodard.
Absent: None.

Also present: City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement.

CEREMONIAL ITEMS/ANNOUNCEMENTS BY COUNCIL

Council Member Woodard welcomed viewers who were watching the live City Council Meeting and made comments on the redesign of the City's website. He recognized staff [City Clerk's Office, Technology Solution and Public Affairs] who made the live broadcast of City Council Meeting possible, congratulated Dr. Chuck Davis on his 70th birthday and 50th anniversary of his dance career.

Council Member Stith requested an excused absence from the January 4, 2007 City Council Work Session. Also, he asked the City Manager to add to the January 18, 2007 Work Session agenda the continued discussion on the performance audit/organizational assessment for the City of Durham. He asked the City Manager to set up a Citizens Committee within 30 to 60 days to review the process and to choose a department for the performance audit.

MOTION by Council Member Catotti seconded by Council Member Woodard to excuse Council Member Stith from the January 4, 2007 City Council Work Session was approved at 7:10 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard.
Noes: None. Absent: None.

Council Member Clement asked that the Linda Jones case be discussed at the January 4, 2007 City Council Work Session.

PRIORITY ITEMS BY THE CITY MANAGER, CITY ATTORNEY AND CITY CLERK

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. City Manager Baker requested that Consent Agenda Item #18 be referred back to the administration and updated Council on the homicide that occurred December 31,

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2006 at 119 W. Main Street.

Mayor Bell asked staff to provide a report on the location of the downtown beat officers at the time the incident occurred.

Deputy Police Chief Hodge reported the supervisor, two beat cars and two supplemental patrol officers were assigned downtown the night the homicide occurred. He noted the two supplemental patrol officers went off duty at 2:00 am so there were three officers--two supervisors and a beat officer assigned downtown at the time of the homicide. He informed Council the incident occurred outside the facility after it had closed at 2:30 am, this was a private party and private security was provided with no Durham police officers. He noted that he would investigate where the officers were at the time the homicide occurred at the request of Mayor Bell.

City Manager Baker discussed recent newspaper articles regarding the City's lead testing. The City Manager categorized concerns raised into two general categories: 1) the credibility of the required testing procedures that the City did in September 2006 and process of notification of the lead test results both positive and negative to the state and Durham homeowners. He informed Council that today the City has not been notified formally or informally that the City has violated any rule or regulation regarding testing protocol or the notification of requirements to the state and Durham homeowners. Mr. Baker noted he requested a meeting with state officials this week to receive definitive answers to questions and stated the City's creditability has been called into question and should be verified by an independent agency—not the City—regarding the entire City's testing protocols and notification of this issue. He reported the City had completed 1,000 tests [compliance and customer initiated testing], expressed concern about the articles which indicated citizens were not notified of their test results and commented on the test result letters that were sent to the citizens of Durham and advice provided if test result was above the action level prescribed by EPA. City Manager Baker stated there is no evidence that the water coming from treatment plants into the home had lead in it. He made comments on the sampling process of ten homes that the City thought would provide a negative reading as it relates to lead in the water prior to compliance testing in September which brought about changes in the formula. He noted all test results have been submitted to the state regardless of results and awaiting further direction from them. He asked Council to allow him to schedule a meeting with state representatives this week, allow state representatives to answer questions from the Mayor and Council Member Stith that require independent verification and provide an independent report from the state, federal government or independent agency of all the City's protocol as it relates to lead testing.

Council held discussion on the following: violation of laws and regulations, training of personnel in water management, public trusts, notification process and newspaper articles—citizens did not receive test result.

Mayor Bell asked staff to provide him with a copy of the notification process policy and to contact individuals in the newspaper articles to verify information. Also, the Mayor

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spoke in support of an independent agency investigating this matter. Council held discussion on proactive measure by staff – inserting lead information with water bill statement and independent agency. Council Member Clement asked staff to contact someone from the regulatory agency to be present at the January 4, 2007 City Council Work Session.

MOTION by Council Member Stith seconded by Council Member Woodard to accept the City Manager's priority items was approved at 7:42 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

There were no priority items from the City Attorney.

City Clerk Gray swore in Rochelle Newton-Brown as a member of the Durham Housing Authority Board of Commissioners.

CONSENT AGENDA

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. No items were pulled.

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to approve the Consent Agenda was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Approval of City Council Minutes

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to approve City Council Minutes for the November 20, 2006 City Council Meeting;

To approve City Council Action taken at the November 9, 2006 City Council Work Session; and

To approve City Council Minutes for the following Closed Sessions: January 22, 2004, September 9, 2004, May 19, 2005, September 22, 2005, November 10, 2005, December 8, 2005 and March 23, 2006 was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Firemen's Relief Fund Board of Trustees - Appointment

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to appoint Larry Crabtree to fill one (1) vacancy on the Firemen's Relief Fund Board of Trustees with the term to expire on January 1, 2009 was approved at 7:46 p.m. by the

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following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Housing Appeals Board - Appointment

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to appoint W. Russell Congleton to fill one (1) vacancy on the Housing Appeals Board for an Alternate Member to represent Residence Owner with the term to expire June 30, 2009 was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Raleigh-Durham Airport Authority - Appointment

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to appoint Tonita F. Lipscomb to fill one (1) vacancy on the Raleigh-Durham Airport Authority with the term to expire on January 1, 2009 was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Setting Date for FY 2007-2008 Annual Action Plan "Needs" Public Hearing

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to set a public hearing for the FY 2007-2008 Annual Action Plan "Needs" on Tuesday, January 16, 2007 to receive public comments on the City's Housing and Community Development needs was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Bid Report - October 2006

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to receive a report and to record into the minutes bids which were acted upon by the City Manager during the month of October 2006 was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Date: November 16, 2006

To: Patrick W. Baker, City Manager

Through: Wanda S. Page, Assistant City Manager
Kenneth C. Pennoyer, Finance Director

From: Joseph W. Clark, Purchasing Manager

Subject: Bid Report – October 2006

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Recommendation

To receive a report and to record into the minutes bids which were acted upon by the City Manager during the month of **October 2006**.

Apparatus, Supplies, Materials, Equipment, Construction and Repair work:

1. Bid: Five (5) 24-ton trailers

Purpose of Bid: To provide the Street Maintenance and Water & Sewer Maintenance with equipment trailers.

Comments: Five trailers at \$15,272 each

Opened: October 9, 2006

Bidders:	Gregory Poole Equipment Co.	* \$76,360.00
	Raleigh, NC	
	Carter Machinery Company	\$83,825.00
	Salem, VA	

*Awarded based on: X Low Bid _____ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	512		# Black Males	41	8%
Total # Females	68	13%	# White Males	386	75%
Total # Males	444	87%	# Other Males	17	3%
			# Black Females	5	1%
			# White Females	60	12%
			# Other Females	3	1%

The SDBE Data Base was used in the solicitation of bids for this item.

2. Bid: One Zero Turn Mower

Purpose of Bid: Purchase a mower for the Cemetery Division

Comments:

Opened: October 27, 2006

Bidders:	Triad Lawn & Garden Equipment	* \$12,827.40
	High Point, NC	

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Barnhill Equipment Company
Durham, NC

\$13,334.17

*Awarded based on: ☒ Low Bid ☐ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	5		# Black Males	1	20%
Total # Females	1	20%	# White Males	3	60%
Total # Males	4	80%	# Other Males	0	0%
			# Black Females	0	0%
			# White Females	1	20%
			# Other Females	0	0%

The SDBE Data Base was used in the solicitation of bids for this item.

3. **Bid:** **Police Winter Jackets**

Purpose of Bid: To provide the Police Department with winter jackets.

Comments: 60 jackets @ \$197.90 each

Opened: October 4, 2006

Bidders:	Century Uniforms	*\$11,874.00
	Raleigh, NC	
	Showfety's Inc.	\$14,097.00
	Greensboro, NC	

*Awarded based on: ☒ Low Bid ☐ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	29		# Black Males	2	08%
Total # Females	22	76%	# White Males	5	17%
Total # Males	7	24%	# Other Males	0	0%
			# Black Females	7	24%
			# White Females	14	48%
			# Other Females	1	03%

The SDBE Data Base was used in the solicitation of bids for this item.

4. **Bid:** **Replace Roof at Fire Station No. 2**

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Purpose of Bid:

Comments: The Fire Department handled and received quotes for this bid.

Opened: October 18, 2006

Bidders:	Allen & Sons Exteriors	*\$12,240.00
	Durham, NC	
	Wiles Roofing Company	\$13,890.00
	Oxford, NC	
	Piedmont Roofing	\$14,450.00
	Durham, NC	

*Awarded based on: X Low Bid _____ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	6		# Black Males	0	0%
Total # Females	1	20%	# White Males	4	60%
Total # Males	5	80%	# Other Males	1	20%
			# Black Females	0	0%
			# White Females	1	20%
			# Other Females	0	0%

The SDBE Data Base was used in the solicitation of bids for this item.

5. Bid: Police Concealable Body Armor Vests Protech Brand

Purpose of Bid: To purchase (32 each) concealable body armor vests for the Police/SET Division. The Asset Forfeiture funds are being used to purchase these vests.

Comments:

Opened: October 26, 2007

Bidders:	Lawmen's	*\$38,308.00
	Raleigh, NC	
	Arrington Police	\$39,200.00
	Greensboro, NC	
	GT Distributors	\$42,688.00

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Rossville, GA

*Awarded based on: ☒ Low Bid ☐ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	20		# Black Males	0	0%
Total # Females	8	60%	# White Males	12	60%
Total # Males	12	40%	# Other Males	0	0%
			# Black Females	0	0%
			# White Females	8	40%
			# Other Females	0	0%

The SDBE Data Base was used in the solicitation of bids for this item.

6. **Bid:** **Purchase and Installation of Traffic Pre-emption Equipment at Fire Station 16**

Purpose of Bid: West Virginia Signal & Light is the sole provider of the Tomar Pre-emption Equipment. This is traffic detection and monitoring equipment.

Comments: The General Services Department handled this in conjunction with the construction of Fire Station 16.

Opened: October 23, 2006

Bidders: West Virginia Signal & Light, Inc.
*\$18,645.00
 Kenna, WV

*Awarded based on: ☐ Low Bid ☒ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	9		# Black Males	0	0%
Total # Females	0	0%	# White Males	9	100%
Total # Males	9	100%	# Other Males	0	0%
			# Black Females	0	0%
			# White Females	0	0%
			# Other Females	0	0%

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The SDBE Data Base was used in the solicitation of bids for this item.

7. Bid: Repair and Resurface Exterior Patio Deck

Purpose of Bid: To repair and resurface exterior patio deck at City Hall 4th floor

Comments: The General Services Department handled and received quotes for this repair.

Opened: September 27, 2006

Bidders:	Surface Concepts, Inc.	*\$11,920.00
	Burlington, NC	
	Hubbard & Associates	\$14,318.00
	Kannapolis, NC	
	ProCoat, LLC	\$16,480.00
	Spartanburg, SC	

*Awarded based on: X Low Bid _____ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	23		# Black Males	0	0%
Total # Females	4	25%	# White Males	11	60%
Total # Males	19	75%	# Other Males	8	15%
			# Black Females	0	0%
			# White Females	4	25%
			# Other Females	0	0%

The SDBE Data Base was used in the solicitation of bids for this item.

8. Bid: Traffic Sign Blanks

Purpose of Bid: To provide Transportation/Sign Shop with traffic sign blanks.

Comments:

Opened: October 4, 2006

Bidders:	Vulcan Signs	*\$31,549.00
	Foley, AL	
	Korman Signs	\$40,808.50

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Richmond, VA

*Awarded based on: X Low Bid _____ Other (See Comments)

WORKFORCE STATISTICS
CORPORATION STATISTICS

Total Workforce	176		# Black Males	49	27.84%
Total # Females	28	15.91%	# White Males	98	55.68%
Total # Males	148	84.09%	# Other Males	1	.57%
			# Black Females	5	2.84%
			# White Females	22	12.50%
			# Other Females	1	.57%

The SDBE Data Base was used in the solicitation of bids for this item.

Sufficient funds were available at the time of the award. The Administration recommends acceptance of the above bids denoted by an asterisk (*).

Subject: Resolution Authorizing An Auction - January 27, 2007

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to adopt a Resolution Authorizing an Auction to be held on January 27, 2007 at 10:00 a.m. was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9423

Subject: Setting Public Hearings for the Confirmation of Assessment Rolls -Sewer Main on Marvin Drive; Pavillion Place and Mayo Street

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to adopt resolutions setting public hearings for January 16, 2007, for the following assessment rolls was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Sewer Main on Marvin Drive from Farrington Road to the West Property Line of Tax Map
484-4-12;

Sewer Main on Pavillion Place from the North Property Line of PIN 0709-02-85-4702 to the South Property Line of PIN 0709-02-85-3564; and

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Sewer Main on Mayo Street from Tax Map 603-2-1 to the South Property Line of Tax Map 603-2-2

Subject: Setting Public Hearings to Consider Ordering Petitioned Improvements- Brightwood Lane; Red Oak and Infinity Road

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to accept a Certificate of Sufficiency from the Manager of Engineering and Stormwater for each of the following petitions, and

To adopt a resolution setting a public hearing for January 16, 2007 to consider ordering each of the following improvements was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Water Main on Brightwood Lane from Fletchers Chapel Road West to the West Property Line of PIN 0852-04-52-1762;

Curb, Gutter and Paving, Water and Sewer Laterals on Red Oak Avenue from Hemlock Avenue to Gaston Avenue; and

Sidewalk on Infinity Road (South Side) from Shadebush Drive to Lazyriver Drive

Subject: Street Acceptance - Vivian Street

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to accept the street as listed below for maintenance by the City of Durham was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Vivian Street – from the centerline of Blackwell Street east to the west curb line of Mangum Street (525'.)

Subject: City Council Practices on Excused Absences

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to discuss City Council practices regarding excused absences was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Amendment to the Targeted Community Development Areas to Include a Portion of Holloway Street

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MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to adopt a "Resolution Establishing a Job Creation and Retention and Investment Incentive Policy", and

To amend the "Targeted Community Development Areas" map to include those properties fronting Holloway Street between Alston Avenue and Miami Boulevard was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9424

Subject: Lease Agreement between the City of Durham and the State of North Carolina for Exclusive Space on the Cole Mill Road Radio Tower to Operate a Viper System

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager, under the authority of G.S. 160A-274 to execute the 20-year Lease Agreement with an automatic renewal of one 10-year term with the State of North Carolina to lease space on the radio tower at Parcel #174121 - 1701 Colewood Drive; and

To authorize the City Manager to make changes to the lease, prior to execution, provided such changes do not materially affect the intent and purpose of the Lease and agenda memo was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Compensation and Classification Recommendations

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to adopt as amended the Plan of Position Compensation and Classification for the City of Durham effective January 6, 2007 was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Contract Amendment for Contract ST-224 Downtown Improvements Phases I & II - Triangle Grading & Paving Inc.

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to amend contract ST-224 Downtown Improvements Phases I & II with Triangle Grading & Paving, Incorporated by \$1,766,000.00. which represents a 15.5% increase over the \$11,381,902.00 previously authorized expenditure to facilitate completion of the street improvements; and

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To authorize the expenditure from the Water Extensions & Improvements and the Downtown Improvements Phases I & II accounts was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Memorandum of Agreement for the US 15-501 Transit Corridor

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute the Memorandum of Agreement for the US 15-501 Transit Corridor; and

To authorize the City Manager to make minor non-substantive changes consistent with the general objectives of the agreement was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Contract ST-227 Street Improvements - Thalle Construction Company

To authorize the City Manager to execute contract ST-227 for Street Improvements with Thalle Construction Company, Incorporated in the amount of \$4,397,930.50;

To establish a contingency fund in the amount of \$590,442.80 (13.43%); and

To authorize the City Manager to negotiate change orders provided that the cost of all change orders does not exceed \$590,442.80 and the total project cost does not exceed \$4,988,373.30.

Note: This item was referred back to the administration at the request of the City Manager.

Subject: Professional Engineering Services for Pavement Condition Survey - MACTEC Engineering & Consulting Inc.

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with MACTEC Engineering and Consulting Incorporated in an amount not to exceed \$49,952.00 for professional services to perform a Pavement Condition Survey for the City of Durham; and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by the City Council was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Hock Plaza Public Storm Sewer System Contract - Hock Plaza II, LLC

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MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to adopt an Ordinance Amending the Stormwater Improvement Project Ordinance, Fiscal Year 2006-07, as amended, the same being Ordinance #13288; and

To authorize the City Manager to negotiate and execute a contract with Hock Plaza II, LLC in an amount up to \$1,500,000.00 for the storm sewer system improvements within Pratt Street and Douglas Street was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13370

Subject: Knuckle Boom Truck Replacement Plan

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to declare three (3) Chevrolet/Hol-Mac knuckle boom trucks with cabs (Fleet Numbers 34303, 34304, and 34305) as surplus and post the trucks in an electronic auction on Govdeals.com was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Engineering Services for Repairs to the Little River Dam - Hazen and Sawyer

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to adopt a resolution exempting engineering services for the Little River Dam Repair Project from G.S. 143-64.31;

To authorize the City Manager to execute a contract with Hazen and Sawyer for engineering services in an amount not to exceed \$197,470.00 for the Little River Dam Repair Project; and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9425

Subject: Contract SR-45 - East Durham Outfalls, Phase II - Reynolds In-Liner

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MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with Reynolds In-liner, LLC for Contract SR-45 East Durham Outfalls Phase II in the amount of \$548,892.00;

To establish a contingency fund for Contract SR-45 of \$54,888.00; and

To authorize the City Manager to negotiate change orders for Contract SR-45 provided that the cost of all change orders does not exceed \$54,888.00 and the total project cost does not exceed \$603,780.00 was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Subject: Hollow Rock Planning Committee - Appointment

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to appoint Council Member Mike Woodard to the Hollow Rock Planning Committee was approved at 7:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

City Council disposed of the following agenda items at the December 20, 2006 Work Session:

Subject: Proposed Sale of Property at 519-B Eastway Avenue PIN# 0831-10-45-4488 and 1405 Taylor Street PIN# 0831-10-45-6096

To determine the properties at 519-B Eastway Avenue and 1405 Taylor Street as surplus;

To authorize the sale of the properties under the authority of Section 86 of the City Charter;

To accept the offers to purchase for the properties located at 519-B Eastway Avenue and 1405 Taylor Street; and

To authorize the City Manager to sell and the Mayor to convey the properties by a non-warranty deed.

Note: This item was approved at the December 20, 2006 Work Session with a vote of 5/0.

Subject: A New East Durham

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To receive comments from Melvin Whitley regarding a 10-Year Plan to pave the dirt streets of Durham.

Note: Citizen did not appear at the December 20, 2006 Work Session.

Subject: Johnny C. Carter

To receive comments from Johnny C. Carter regarding the Departments of Community Development and Police.

Note: Comments were received at the December 20, 2006 Work Session.

Subject: Eno River Association

To receive comments from Robin Jacobs expressing thanks and for support of the Eno River Association.

Note: Comments were received at the December 20, 2006 Work Session.

Subject: Ahmed F. Ahmed

To receive comments from Ahmed F. Ahmed concerning his taxi cab permits.

Note: Comments were received at the December 20, 2006 Work Session.

GENERAL BUSINESS AGENDA - PUBLIC HEARINGS

Subject: Plan Amendment-Lowe's of South Durham (A06-03) - Tony M. Tate, Landscape Architecture - Lowe's of South Durham

To receive public comments on the Lowe's of South Durham (A06-03) Plan Amendment; and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Medium Density Residential (6-12 DU/Ac.) to Commercial and Institutional.

Mayor Bell asked to be recused from voting on this item. He noted part of the plan that is being proffered, property would be purchased from his employer UDI/CDC, but he has no personal gain.

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City Attorney Blinder stated given that UDI has a potential financial interest in the outcome of the vote on the plan amendment, he asked Council to vote on the Mayor's request.

MOTION by Council Member Stith seconded by Council Member Woodard to excuse Mayor Bell from voting on this item was approved at 7:48 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Mayor Bell asked Mayor Pro Tempore Cole-McFadden to conduct the public hearing on this matter.

The Mayor Pro Tem opened the public hearing.

City/County Planning Director Frank Duke reported he has all the required certifications established by N C law for all the planning items on the agenda. Mr. Duke briefed Council on the plan amendment making comments on the applicant's justification for the plan amendment--intersection of these two streets provide a basis for commercial land use. He stated this is not adequate justification for a plan amendment after staff's review and this plan amendment meets three of the four criteria--adequate shape and size, adverse impacts, and plan consistency; however, there is an issue with compatibility. Mr. Duke stated staff recommended denial and the Planning Commission recommended approval.

Patrick Byker, representing the applicant, spoke in support of this plan amendment. He disagreed with the conclusion reached in this case and made comments on the future land use map. Regarding traffic issues, he noted a multi-family residential development will not generate the funds needed to improve Fayetteville Street and as of tonight, the City of Durham has no money either from impact fees/bond referendum to improve Fayetteville Street at the Martin Luther King, Jr. intersection. He outlined four additional reasons from the text of the Comprehensive Plan that support this plan amendment: 1) comprehensive plan requires commercial uses be clustered at the intersection of major thoroughfares—Martin Luther King, Jr. Parkway and Fayetteville Road are both major thoroughfares; 2) comprehensive plan requires separation of commercial developments by a half mile in the suburban tier—the closest commercial development to the proposed Lowe's site is at MLK Parkway and S. Roxboro which is slightly more than a mile away and double the separation requirement; 3) Comprehensive Plan discourages strip development—plan amendment will create an attractive 30-acre master plan commercial center; and 4) Comprehensive Plan notes certain sections of Durham need economic development—plan amendment will create good paying jobs with full benefits, on the existing DATA bus line in this section of Durham. Finally, he urged Council to follow the recommendation of the Planning Commission and approve this plan amendment.

Norma Martin, representing Alpha Zeta Omega Chapter, spoke in support of this plan amendment because it addresses a current economic void in the community, will address the need for job opportunities and will help stimulate growth.

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Thelma White, of 1015 Jerome Road, noted the Emorywood community supports this item because the developer was responsive to their requests and incorporated them into the proposed plan which will include significant road improvements to Fayetteville Street and will reduce commuter traffic and congestion between MLK and Cornwallis at no costs to the taxpayers. She noted the Lowe's store will generate significant property taxes and sales taxes for Durham. She noted the community is delighted at the prospect of having two sit-down restaurants at this site. She urged Council to support this project. Also, she provided Council with an e-mail that was sent to Council previously.

Harold Chestnut noted PAC 4 voted to support the Lowe's project because it would be very good for the community.

According to communication received from the President of the Emorywood Associates, Council Member Clement asked Mr. Wagner--a representative from Lowe's if this project would bring 100 good paying jobs at least \$10.15 an hour.

Mickey Wagner, Lowe's representative, replied yes.

Relative to improving the ingress/egress in the area, Council Member Clement asked if prescribed changes along Fayetteville Street and Martin Luther King, Jr. Parkway will come.

Mickey Wagoner, Lowe's representative, replied yes.

City Attorney Blinder reminded Council that this item deals with a plan amendment and not a rezoning decision.

Bernice Johnson, of 507 Tuggle Street, noted Reconciliation United Methodist Church, noted the improvements that will be brought to the area by this Lowe's improvement project will promote economic growth, urban progress and will provide a rich level of diversity in the area which will include the residential, economic, commercial, community service and religious. She urged Council to support this project.

The Mayor Pro Tem closed the public hearing.

Council Member Catotti made comments on the issue of the traffic impact analysis--no build, build, etc. issues.

City/County Planning Director Frank Duke noted this detail should be reviewed during the rezoning which will take place in February.

Council Member Catotti shared comments on the issues of land use, traffic and other concerns. She expressed traffic concerns and noted she has heard from a number of people that are concerned and do not support the project. She noted she was concerned about the newly completed east/west Martin Luther King, Jr. corridor, rezoning for the

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big box development currently for Wal-Mart has already been approved a mile away at the intersection of Martin Luther King, Jr. Parkway and S. Roxboro Road. She stated if the public's concern is about improvements to the area and the jobs, these could be achieved through an attractive mixed-use development; for example, something Council just approved last month--Heritage Square further North on Fayetteville Road. She noted a mixed use development is allowed under the existing land use plan so it would not require a plan amendment as proposed tonight. She stated she is very concerned about traffic in the area and there are significant road improvements planned by the developer on Fayetteville Road but these are required by ordinance to accommodate their development. Also, she expressed concern about any new traffic improvements that might be wasted. The proposed turn lane additions don't meet the improvements proposed in the City's long range transportation plan. She stated if this project moves forward it will be essential at a minimum that the developer design traffic plans in conjunction with city efforts and that plan conforms and fit the design plan. She also expressed concerns with parking lot landscaping and an undisturbed landscape buffer along the Martin Luther King, Jr. Parkway.

Council Member Stith spoke in support of this item noting this is an appropriate change to the land use and an excellent opportunity to improve that area of the City.

City/County Planning Director Frank Duke outlined the next step in this process commenting on the zoning map change, site plans, and drawings.

City/County Planning Director Frank Duke updated Council on the Wal-Mart located on South Roxboro Road and Martin Luther King, Jr. Parkway. He noted during the development of the Comprehensive Plan, the property owner for that site came forward with a zoning map change for a big box retail use that was approved, site plan was filed on the site last year and a revised site plan was submitted in October reflecting the new flood plain ordinance provisions that was an administrative action and not a public hearing item.

For clarification on whether neighbors have a remedy who do not support the Wal-Mart, City/County Planning Director Frank Duke noted once the zoning decision was approved by Council that was the last opportunity for any discretion and from that point it is administrative.

City/County Planning Director Frank Duke noted the Wal-Mart development has not added any additional lights, but one medium break on Martin Luther King, Jr. Parkway.

Council Member Stith disclosed his wife is a member of one of the organizations supporting the land use amendment.

MOTION by Council Member Clement seconded by Council Member Stith to receive public comments on the Lowe's of South Durham (A06-03) Plan Amendment; and To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Medium Density Residential (6-12 DU/Ac.) to

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Commercial and Institutional was approved at 8:18 p.m. by the following vote: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Clement, Stith and Woodard. Noes: Council Member Catotti. Abstention: Mayor Bell. Absent: None.

Resolution #9426

Subject: Unified Development Ordinance (UDO) Text Amendment - Chain-Link Fencing (TC06-19)

To receive public comments on the Unified Development Ordinance (UDO) Text Change - Chain-link Fencing (TC06-19); and

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, incorporating revisions to Article 9 to repeal the provisions restricting use of chain-link fences.

City/County Planning Director Frank Duke briefed Council on the text amendment.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to receive public comments on the Unified Development Ordinance (UDO) Text Change - Chain-link Fencing (TC06-19); and

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, incorporating revisions to Article 9 to repeal the provisions restricting use of chain-link fences was approved at 8:20 p.m. by the following vote: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13371

Subject: Initial Zoning Map Change - Triangle Metro Center (Z06-61A) - Triangle Metro - North of Hopson Road, East and West of Davis Drive

To receive public comments on the initial zoning map change for Triangle Metro Center (Z06-61A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish OI(D), CC(D), IL, RU-M(D) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the

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public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments on the initial zoning map change for Triangle Metro Center (Z06-61A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish OI(D), CC(D), IL, RU-M(D) zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13372

Subject: Initial Zoning Map Change - Simko Property (Z06-21A) - The John R. McAdams Company, Inc. - Page Road - Wind River Parkway and Smallwood Drive

To receive public comments on the initial zoning map change for Simko Property (Z06-21A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish RR and IP zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, while the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing.

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Cora Lacey, representing the applicant, spoke in support of this item.

Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments on the initial zoning map change for Simko Property (Z06-21A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish RR and IP zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, while the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:23 p.m. by the following vote: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13373

Subject: Initial Zoning Map Change - Junction Road Property (Z06-65A) - Eastern Construction Company, Inc. - The Charles R. Wellons Foundation, D&J Investment, REA Junction Road, LLC - RL Horvath

To receive public comments on the initial zoning map change for Junction Road Property (Z06-65A);

To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish RS-M(D), RS-10(D), RS-8(D), IL, RS-20 and RS-8 zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, while the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials.

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Brown to receive public comments on the initial zoning map change for Junction Road Property (Z06-65A);

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To adopt an Ordinance Amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, to establish RS-M(D), RS-10(D), RS-8(D), IL, RS-20 and RS-8 zoning for the property described in the attached staff report; and

To adopt as support for its action on the proposed zoning map change the determinations that, while the action is not consistent with the Comprehensive Plan, it is reasonable and in the public interest given that this reflects the zoning of the property in the County and in light of information presented in the public hearing and in the accompanying agenda materials was approved at 8:26 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13374

Mayor Pro Tempore Cole-McFadden asked the public to engage in all activities planned for the celebration of Dr. Martin Luther King, Jr. Also, she announced a joint city and county celebration has been scheduled for January 17, 2007 at First Presbyterian Church.

Mayor Bell announced a City Council Retreat will be held January 5, 2007 at 9:00 am at the Museum of Life and Science.

ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 8:26 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk